

R E M A R K S

In the Office Action of September 7, 2001, the Examiner objected to the abstract and rejected pending Claims 13 and 14 as obvious over Kralik, et al., in view of Isackson and Zadek.

Applicant has amended the abstract to overcome the Examiner's objection. Applicant submits herewith a Declaration under 37 C.F.R. § 1.132 setting forth facts relevant to the rejection based in 35 U.S.C. § 103. Reconsideration and allowance is requested.

The Declaration of Wayne Cohen submitted herewith establishes: (1) the commercial success of the invention, and the fact that the features of the invention play an important part in such success; (2) copying of the invention by others and withdrawal of the copied product upon objection; and (3) facts concerning the invention, particularly that the inventor tried making a key chain following the teaching of the Kralik, et al. patent, which resulted in failure.

The Pocket Percussion catalog, which is Exhibit 1 to the Cohen Declaration illustrates a wide variety of key chain items made using the invention. Some of these items were previously shown to the Examiner. As established by the Cohen Declaration and also evidenced by the variety of such items in the catalog, these products, incorporating the claimed invention have achieved commercial success, having "rapidly

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grown in popularity and sales to become the most important and highest volume sales items of Bong Logic, Ltd.: (Cohen Declaration, Para. 4).

Non-obviousness is further evidenced by the copying by others. (Cohen Declaration, Para. 5).

Further, paragraph 6 of the Cohen Declaration sets forth facts concerning the making of the invention. The inventor, who is also the inventor and owner of the Kralik, et al. patent, did not recognize that it would be obvious or advantageous to modify the Kralik structure of Figure 4 to make a key chain ornament. Accordingly, not even the inventor of the Kralik patent recognized or knew the solution to the problem associated with adapting the Kralik Figure 4 device to a key chain ornament.

In view of the enclosed Declaration, reconsideration of the rejection is respectfully requested.

Applicant encloses a Supplemental Disclosure Statement listing references from a search by The French Patent Office in a corresponding application.

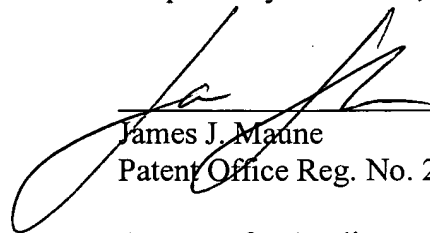
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Attached hereto is a "Version with markings to show changes made."

Respectfully submitted,



James J. Maune
Patent Office Reg. No. 26,946

Attorney for Applicant
(212) 408-2566

BAKER BOTTS
30 Rockefeller Plaza
New York, NY 10112

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VERSION WITH MARKINGS TO SHOW CHANGE MADE

A musical shaker is formed with a rigid shell and pellets enclosed therein attached to a flexible handle. In a first embodiment, the shell part truncates to a small end portion and includes a bottleneck opening in the truncated small end portion. The truncated end portion is closed by an internal joint with a cap member covered by the flexible plastic handle or by the flexible handle itself. In a second embodiment, the shell part is formed by two rigid plastic halves sealed so as to enclose the pellets. The end of the flexible handle is fitted to one end of the shell part and is secured to that end by adhesive. In a third embodiment the flexible handle includes two portions, including a flexible handle portion adjoining [said] the shell.

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